

No. 9(1)82-8Lab./3039.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Delhi Faridabad Textiles Pvt. Ltd., 20/6, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 510 of 1980

between

**SHRI RAMA NAND, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S DELHI-FARIDABAD TEXTILES PVT. LTD., 20/6, MATHURA ROAD,
FARIDABAD**

Shri H. R. Dua, for the workman.

Shri Surinder Singh Rao, for the respondent-management.

AWARD

This reference No. 510 of 1980 has been referred to this Court, by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/116-80/54924, dated 27th October, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947 existing between Shri Rama Nand, workman and the respondent-management of M/s. Delhi Faridabad Textiles, Pvt. Ltd., 20/6, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of service of Shri Rama Nand, was justified and in order? If not, to what relief is he entitled?

The notice were sent to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that the workman joined the respondent concerned on 7th March, 1973 and terminated on 2nd January, 1979 and he was getting the salary of Rs. 300 p. m. doing the job of weaver. The workman was terminated due to the union activities and the workman is entitled for the reinstatement with back wages and continuity of service.

According to the written statement, the case of the respondent is that the dispute does not fall under Section 2-A of the Industrial Disputes Act as the workman has resigned his job of his own and resignation is not a subject which comes under the purview of section 2 (a) of the Industrial Disputes Act. The resignation was accepted by the respondent and his full and final accounts had been prepared but he did not come to receive that the workman accepted the resignation before the Conciliation Officer and admitted his signatures on it, and in the conciliation proceedings it was agreed that the workman shall receive his dues. The workman did not turn up to receive his payment and his statement could not be recorded as it was to be recorded after payment of the dues.

On the pleadings of the parties, the following issues were framed :—

1. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?
2. Relief?

My findings on issues is as under :—

Issue No. 1 :—

The representative of the respondent argued that the workman resigned from the job of his own accord,—*vide* Ex. M-1 which was admitted before the Conciliation Officer in the conciliation proceedings and the Conciliation Officer ordered that the workman should collect his dues and make his statement. But after that order the workman did not attend the conciliation proceedings and no statement was recorded of the workman before the Conciliation Officer. The statement of the workman as WW-1 cannot be believed as he has denied the signature on Ex. M-1 and also denied his signature on his own demand notice, dated 6th August, 1980. It shows that workman is not speaking truth before the Court and cannot be believed. The demand notice was filed by the workman and signed the same and if he denies his signature on the demand notice and resignation Ex. M-1 it shows that he is not speaking truth before the Court and cannot be believed.

He further argued that the workman has admitted in his cross-examination that the name given in the resignation are of his co-workmen and they have gone after receiving their full and final accounts from the respondent and he has also admitted in his cross-examination that the section in which he used to work is closed down. The workman has neither denied nor accepted the suggestion of the representative of the respondent that the company has closed down as stated by the respondent witness as MW-1. In his cross examination of the suggestion of the workman's representative that the factory is closed and all workers have taken their full and final accounts and there is no work in the factory. He further argued that after this acceptance of resignation the workman was informed,—*vide* Ex. M-4 to take his dues from the company which was received by him and Ex. M-5 the acknowledgement bears the signature of the workman. He further argued that the workman made a complaint to the Labour Officer which is Ex. M-2 and the Labour Officer send a notice for hearing which is Ex. M-3 and the respondent appeared before the Labour Officer for this complaint and before the Labour Officer in the conciliation proceedings, the workman accepted the resignation and the Labour Officer ordered to receive the payment of his dues. After that he did not appear in the conciliation proceedings. It clearly shows that the resignation of the workman is quite genuine and make no difference of denying it in the court when it is proved that there was no statement before the conciliation officer in the conciliation proceedings and the signature on Ex. M-1 resembles the admitted signature of the workman on Ex. M-2 the complaint to the Labour Inspector. So the workman in these circumstances is not entitled for any relief except the dues with the respondent of the workman. The representative of the workman argued that the resignation is not in a proper form. The resignation of group of persons cannot be said the resignation proper and the workman has denied the signature at Mark A on Ex. M-1 in his statement as WW-1. The workman is an old employee working in the year 1973 upto 1979 and is entitled for so many benefits and was the office bearer of the union of the factory and used to raise the demand of the workmen and the respondent did not want him to be in the factory. The workmen should have given the benefits of section 25-F if this factory is closed which is not given to the workman which is against the law and the workman is entitled for these benefits even after the alleged resignation.

After hearing the arguments of the parties, and carefully going through the file, I am of the view that the workmen joined the service in the year 1973 and worked upto 2nd January 1979 and is an old employee and it is an admitted fact by both the parties that the factory is closed. The workman at the time of closing the factory should have given the compensation and another benefits under section 25-F of the Industrial Disputes Act. Even though he has resigned from his job voluntarily because the factory is closed and there cannot be the relief available to the workmen for reinstatement with full back wages so the workman is entitled for his remaining dues in the factory as stated by the respondent and benefits of retrenchment under section 25-F of the Industrial Disputes Act, 1947. No order as to costs. This be read in answer to this reference.

Dated the 18th March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 680, dated the 19th March, 1982:

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

The 22nd April, 1982

No. 9(1)-82 6Lab./3183.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s The Haryana Dairy Development Co-operative Federation Ltd., Sector 17, Chandigarh:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD
Reference No. 142 of 1981

between

SHRI RAM PARTAP, WORKMAN AND THE MANAGEMENT OF M/S THE HARYANA
DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD.,
SECTOR 17, CHANDIGARH

Present :

Shri Shyam Sunder Gupta, for the workman.
Shri Chander Parkash, for the management.

AWARD

By order No. ID/HSR/3/81/24077, dated 13th May, 1981, the Governor of Haryana referred the following dispute between the management of M/s The Haryana Dairy Development Co-operative Federation Limited, Sector-17, Chandigarh and its Workman Shri Ram Partap, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.—

Whether the termination of services of Shri Ram Partap was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues was framed on 14th August, 1981 :—

Whether the termination of services of Shri Ram Partap was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri Kuljeet Singh, Milk Procurement Officer as MW-1, Shri H. C. Dogra, Milk Procurement Officer, Ballabgarh as MW-2 and Shri Deva Singh, Extension Assistant and Milk Procurement Assistant, Hissar as MW-3. The workman examined himself as MW-1. Arguments were heard. I now give my finding on the issue as follows :—

Issue No. 1 :—MW-1 deposed that the workman was appointed as Dairy Extension Worker in 1977. His work was not satisfactory. He himself was posted at Sirsa in 1977. He did not find the work of the workman satisfactory. He received complaints about his behaviour. He did not organise societies which was his duty. The workman was issued letters Ex. M-1 to M-6 but no reply was given by the workman. His services were terminated,—*vide* letter Ex. M-4. Copy of appointment letter was Ex. M-7. In cross examination he replied that no letter was issued to him about his misbehaviour. He was asked only verbal explanation. About other complaint no letter was issued to him. No domestic enquiry was held against the workman. He admitted letter Ex. W-1 issued by the department. He also admitted that no retrenchment compensation was paid to him; however, one month's notice pay according to appointment letter clause 2 was paid to the workman. MW-2 stated that in 1977 the workman worked under him. Letter Ex. M-2 was issued to the workman by him. The behaviour of the workman was satisfactory. In cross-examination he replied that letter Ex. M-2 was issued to the workman over his supervision but he had no complaint with him. The workman had not replied Ex. M-2. He could not tell if letter Ex. M-2 was served upon the workman or not because he had been transferred to Ballabgarh. MW-3 deposed that he was posted at Sirsa during the period March, 1980 to September, 1981. He asked the workman to make payment to the societies but the workman refused to receive the sum for payment. He made a complaint to MW-1.

WW-1 deposed that he served the management from 1977 to 1980. He was appointed,—*vide* Ex. M-7. He was not issued any charge-sheet, nor any enquiry was held. He had completed his probation period. His services were terminated,—*vide* letter Ex. M-4. He was not paid any compensation or notice pay. In cross-examination he denied the suggestion that he refused to receive membership fee from the members of co-operative societies, rather stated that it was not his duty. He also denied that he ever remained absent from duty.

The learned representative for the management argued that the services of the workman were terminated by invoking clause 2 of the appointment letter because his work and conduct was not satisfactory. On the other hand the learned representative for the workman argued that the workman had completed his period of probation. He had about three years service and his termination amounted to retrenchment.

I have gone through the order of termination which is as under :—

"The services of Shri Ram Partap, DEW, posted under Project Officer, Sirsa are hereby terminated under Clause-2 of the appointment letter with immediate effect. He will be paid salary one month in lieu of notice period".

Clause 2 of the order of appointment is as under :—

"The federation shall at any time during the currency of his service to entitle to terminate his service without notice if the federation finds that he will disobey or failed to perform or comply with any lawful instructions given to him or failed to observe proper discipline or committed breach of any of the conditions and stipulations of the service rules or is found guilty of misconduct including neglect of duty, insobriety, dishonesty, insubordination, fraud or any other offence. Normally, however, after the successful completion of probationary period the appointment will be terminated after one month's notice or either side or one month's salary in lieu thereof".

According to the evidence of the management services of the workman were terminated because his conduct was not satisfactory. However, it is an admitted fact that he was never issued any show cause notice or charge-sheet, nor any domestic enquiry was held. Moreover letter of termination is in simple terms and does not state that any misconduct was proved against him for that his service was terminated for a given misconduct. It is settled law that the management cannot lead evidence to prove termination on which it was never based. The learned representative for the workman cited 1981 (59) FJR Page 121, Deco Engineering Company Limited V/s State of Punjab in which it was held that "Payment of retrenchment compensation was obligatory clause in appointment letter that service may be terminated by one month's notice or pay in lieu is of no avail". The workman had about three years service. The compliance of section 25 (F) of the Industrial Disputes Act, 1947 was a must as held by the Hon'ble the Supreme Court in Mrs. Santosh Gupta V/s State Bank of Patiala reported in 1980 II LLJ Page 72. In view of the discussion above, I find that the termination order is bad in law, therefore, it is liable to be struck off. This issue is decided against the management.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated the 25th February, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endst. No 280, dated the 15th March, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

The 28th June, 1982

No. 9(1)82 6Lab./5767.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s S. J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD.**

Reference No. 55, 56, 74 and 75 of 1981

between

S/SHRI GAURI SANKAR, RAM PARDERATH, AVAD NARAIN AND RAMESH JHA,
WORKMEN AND THE RESPONDENT-MANAGEMENT OF M/S S. J. KNITTING
AND FINISHING MILLS, 13/7, MATHURA ROAD, FARIDABAD.

Present:

Shri G. S. Chaudhary, for the workman.

Shri B. R. Grover, for the respondent-management.

AWARD

These references No. 55, 56, 74 & 75 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/237-80/6502, dated 3rd February, 1981, ID/FD/217-80/7078, dated 5th February, 1981, ID/FD/237-80/6718, dated 4th February, 1981 & ID/FD/217-80/6748, dated 4th December, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Gauti Sankar, Ram Paderath, Avad Narain and Ramesh Jha, workmen and the respondent management of M/s S. J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of S/Shri Gauri Sankar, Ram Paderath, Avad Narain and Ramesh Jha, workmen was justified and in order ? If not, to what relief are they entitled ?

After receiving the references order the notices were issued to the parties, the parties appeared and filed their pleadings. The case of the workmen according to the demand notice and claim statement is that they are appointed as under:—

Name of the workman	Designation	Wages	Date of appointment
1. Shri Gauri Sankar	Operator	Rs. 400/-	21st November, 1974.
2. Shri Ram Parderath	Operator	Rs. 410/-	10th February, 1977.
3. Shri Avad Narain	Operator	Rs. 350/-	22nd December, 1975.
4. Shri Ramesh Jha	Helper	Rs. 288/-	4th November, 1976.

on a permanent post. The respondent terminated their services on 10th August, 1980 without any charge-sheet or show cause notice due to the union activities. The union submitted the demand on the respondent after that the respondent stopped the workman on the gate mala fide. The disputes was settled before the Labour Officer-cum-Conciliation Officer and was settled that all the workmen shall be taken on duty. The claimants reported for duty on the gate of the factory but the respondent refused to give the duty. In this way terminated the services without any reason and the workmen are entitled for the reinstatement with continuity of service and full back wages.

According to the written statement, the case of the respondent is that there are charge-sheets on certain acts of serious and grave mis-conduct against the workers and instead of taking part in the enquiry started being absent without sanction of leave and the name of the workman was not struck off on 10th August, 1980 as alleged on the date of reference. As the name of the workers were not struck off from the company role on the date of demand notice and date of reference, the reference made by the Government is pre-mature and liable to be dismissed. So, the reference may be dismissed.

On the pleadings of the parties, following issues were framed:—

1. Whether the termination of services of the workmen are proper, justified and in order ? If not, to what relief are they entitled ?
2. Relief.

At the stage of workmen's evidence both the parties requests to consolidate these references No. 55, 56, 74 and 75 of 1981 of Shri Gauri Shankar, Ram Parderath, Avad Narain and Ramesh Jha. Their request was exceeded and the case was ordered to be consolidated and it was also ordered that the evidence and documents shall be recorded in Reference No. 55 of Shri Sankar. My findings on issues are as under:—

Issue No. 1:—

The representative of the respondent argued on this issue that as stated by Shri Ram Nath Sharda, Security Officer of the company as MW-1, the workers were absent from duty from 22nd July, 1980 as shown in the abstract of the company's attendance register which is Ex.M-1 and the workmen are absent themselves till today. The workmen raised the demand notice regarding their termination before the Conciliation Officer did not send the failure report to the respondent. The respondent issued the chargesheet to the workman which is Ex.M-3 through a registered post which were received back un-delivered. The respondent again sent a letter Ex.M-4 regarding the absent of the workmen which was also received back un-delivered. The name of the workman is still on the muster roll and has not been struck off from the company. The respondent also sent a letter Ex.M-5 to the workman regarding holding of domestic enquiry against the claimants which was also received back un-delivered. Inspite of these letters the workmen did not turn up to join their duties to void the enquiry. There is an enquiry against these workmen for the serious act of mis-conduct as shown in Ex. M-3 of the charge-sheet and their names are still on the muster roll of the respondent company and the reference is bad and pre-mature.

The representative of the workman argued on this issue that these workmen are old workmen of the company and there was a strike in the factory on some demands raised by the

union of the company and these workmen were stopped at the gate and not allowed to join their duty. The Labour Officer-cum-Conciliation Officer, Sector 21, Faridabad intervened in the matter and settled between the parties and it was decided that all the workmen will report for duty but the respondent refused to give the duty to these workmen illegally as admitted by the respondent witness MW-1 Shri Ram Nath Sharda, in his cross examination that there was a Dharna at the gate of the factory by the workers union from 24th August, 1980. He has further stated in his cross examination that he cannot say from which date the workers made a dharna before the factory for their demands. The workers were on dharna from the month of July, 1980 and after the intervention of the Labour Officer, there was a settlement and according to that settlement these workmen went to join the duty but they were not allowed to enter in the factory on 8th August, 1980. After that the workmen gave a demand notice on 20th August, 1980 and the representative of the respondent appeared in the conciliation proceeding before the Labour Officer and they did not mentioned anything about the chargesheet or enquiry against these workmen. This letter Ex M-3 the charge-sheet was sent by the respondent on the company's address as under:—

Shri Gauri Sankar, S/o Shri Budhu Ram, C/o M/s. S. J. Knitting and Finishing Mills, 13/7,
Mathura Road, Faridabad.

and to the other workers also on the same address which is also admitted by the respondent witness MW-1 in his cross examination that the letters were sent on the factories address, which is admitted by the respondent witness MW-1 in his cross examination that the letters were sent on the factory's address. He has also admitted in his cross-examination that the workman had given his residential address present and permanent in the factory. The respondent did not send those letters on the address given by the workman to avoid any difficulty to the respondent for holding the enquiry. The letter sent to the workman on the address of the factory received back. The letters Ex. M-5 dated 13th October, 1980 for attending the duties which was received back with the remarks that the person is not available on the address given. Ex. M-4, dated 14th August, 1980 for calling the workmen for enquiry on 23rd August, 1980 was also sent through registered post on the address of the company which was also received back. The respondent witness MW-1 has also accepted in his cross-examination that these workmen were not living in the factory shows that the address given and letters sent only to show and not to call or inform the workmen. The workmen were not informed for any chargesheet or enquiry by any means. The respondent had failed to inform the workmen and they did not issue an other letter after the letter Ex. M-5 dated 13th October, 1980 which was also received back by the respondent as un-delivered. He further argued that the respondent witness MW-1 has stated in his statement that the workmen did not turn up to join their duties, even after receiving the letter is quite wrong. They were not sent any letter. The workmen were on the Dharna and sitting before the factory gate. If they want to give the charge-sheet they can give it at the gate of the factory. No letter Ex. M-5 through which the respondent has directed the workmen that they should join the duty was issued. Otherwise their name would be struck off from the roll of the company, but their names as stated by MW-1 in his statement are still on the roll of the company. The reason is not given and not cleared by the respondent why they maintained the names of the workmen on the roll till today. Without any reason or cause according to their standing order which were applicable to them. They cannot retained the name of the absentee workmen for such a long time. They should have struck off name of the workmen after eight days absence without permission. He further argued that actually they have terminated the services of the workmen from 8th August, 1980 when they disallowed the workmen to join their duties and they are keeping the names for such objection as they have raised in these references as the reference is premature as their names has not been struck off from the roll of the company. He further argued that there is no charge against these workmen. If there is any charge against these workmen they should have brought these charges before this court to prove their case that there are serious charges against these workmen which the respondent has failed and did not produce any evidence to prove the charges against these workmen in the court which also shows that there were no serious charges against these workmen and they were terminated illegally. So the workmen are entitled for the reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has failed to prove that they have not terminated the services of the workmen. It is admitted fact that there was strike and Dharna before the gate of the factory which is admitted by both the parties on certain demand notice and after this there is a conciliation proceedings between the parties as stated by the workmen in their statement and settled that these workmen will be taken back on their duty but they were not taken back according to the settlement. Though there is no settlement produced in the court but what has stated by the workmen about the settlement was not questioned by the respondent in his written statement or in the evidence. So it is clear that there was some settlement between the parties regarding to their services. I agree with the workman's representative arguments that why the respondent is keeping the names of these workmen on roll without any reason. When there is provisions in the standing order that there name should be struck off after the prescribed period

when they absent from their duties. There is no reply from the respondent's side of this quary. Furthermore the respondent sent the letters to the workmen through registered post on their own factory's address is very clear that they have not sent any letter to these workmen to inform them about their chargesheet or enquiry. They could have informed and delivered the letters of charge-sheet or enquiry in the conciliation proceedings before the Labour Officer-cum-Conciliation Officer. Even there they failed to give such letters to the workmen and taken the plea is very clear that the workmen were illegally terminated by the respondent who were old employees of the factory so this issue is decided in favour of the workmen and against the respondent. After deciding this issue in favour of the workman, the workmen are entitled for their reinstatement with full back wages and continuity of service because the respondent has failed to prove that they were absent themselves on their own accord.

This be read in answer to this reference.

Dated, the 28th May, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 1198, dated 2nd June, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the I. D. Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad

The 30th July, 1982

No. 9(1)82-6Lab./6957.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Sonepat Co-operative Sugar Mills Ltd., Sonepat Labour Court, Haryana, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 201 of 1979

between

SHRI JAGAT SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE SONEPAT CO-OP. SUGAR MILLS, LTD., SONEPAT.

Present :—

Shri Ram Sarup Lakra, for the workman.

Shri Vishnu Dutt Sharma, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his Order No. ID/SPT/130-79/48632, dated 16th November, 1979 under section 10(i) (c) of I.D. Act for adjudication of the dispute existing between Shri Jagat Singh, workman and the management of M/s The Sonepat Co-operative Sugar Mills Ltd., Sonepat. The term of the reference was :—

Whether the termination of Services of Shri Jagat Singh was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings and the only issue which arose about their pleadings was 'As per the term of reference'.

The management examined Shri Sahib Singh Dahiya, as their only witness and closed their case. The workman examined Shri Raj Pal s/o Prem Raj r/o Village Jakholi, Shri Mahabir Parsad, Security Guard respondent and himself as his witnesses and closed his case. I heard the learned representatives of the parties and decide the issues as under.

Issue.—The workman was charged for being negligent and inefficient in his duties on 17th February, 1979 when the Managing Director being informed by Shri Mohinder Singh, Cane Clerk found at 1-45 A.M. that two trolleys full of cane had come to donga unauthorisedly and when the Managing Director had come to the site, he met Shri Sardar Singh of village Jajal and Narinder Singh of village Udeshipur and Raj Pal of village Jhakauli who also confirmed the above fact. The trolleys were numbered as HRK-5673 and HRS-5167. It was further alleged that these tractors were being brought to the cane carrier with some ulterior motives and that the mischief would have been caused financial loss to the mills if he had not reached and checked these tractors. The management pleaded that Shri Duli Chand was appointed Enquiry Officer when the reply of the workman was not found satisfactory. The Enquiry Officer submitted his report on 5th May, 1979 and after considering the enquiry report final show cause notice was issued. The workman submitted his explanation to the final show cause notice and requested for personal hearing. The Managing Director directed the workman to appear for personal hearing on 26th May, 1979 but he did not appear on this date and the date of personal hearing was adjourned to 31st May, 1979, 7th June, 1979 and 20th June, 1979 but he did not appear for personal hearing before the Managing Director and sent telegram for extension on the plea of illness. However, the workman appeared on 21st June, 1979 and was heard in detail but no fresh light on the subject was thrown by him demanding any leniency. After that the services of the workman were terminated, — vide order Ex.MW-1/A. The management has not examined the Enquiry officer as their witness who could prove the enquiry proceedings on the findings given by him.

The workman has assailed the enquiry that the workman was not given the reasonable opportunity of defence and witnesses examined by the Enquiry Officer behind his back. He did not record the statement of the witnesses in the presence of the workman. The Enquiry Officer was only competent to explain and prove that the workman was given full opportunity of his defence and the witnesses of the management were examined in the presence of the workman and the workman was given the opportunity to cross-examine them. No record of the enquiry proceedings has been placed on file, in the absence of any such evidence the enquiry cannot be held to be fair and proper and in accordance with the principle of natural justice. The management has also not been able to prove before me that the workman was guilty of the charges levelled against him. On the other hand the workman has been able to establish his innocence and to disprove the management version by corroborative evidence though the oral testimony of his witnesses WW-1 Shri Raj Pal and WW-2 Shri Mahabir Parshad. He had also filed the affidavit of Shri Raj Pal Singh WW-1, which has been marked as Ex-W-1, Affidavit of Shri Mahabir Singh marked as Ex. W-2, Affidavit of Shri Sardar marked as Ex. W-4 and affidavit of Narinder Singh marked as Ex. W-5. The names of Sardar Singh, Narinder Singh and Raj Pal Singh are mentioned in the charge sheet issued to the workman who have stated on oath that no trolley was weighed without its turn on 17th February, 1979 at 1-20 A.M. or so. Shri Raj Pal Singh has further stated that he did not go to the mills on 17th February, 1979 morning and he did not see any trolley being weighed out of turn. Shri Narinder Singh also filed affidavit that he did not visit the mill on the night of 16th February, 1979 nor any slip was received by him. No tractor or trolley was seen by him being weighed without its turn. All the persons mentioned in the charge sheet have refuted the allegation of the management and supported the case of the workman that no such irregularity as alleged by the management was committed on 17th February, 1979 at 1-45 A.M. The management has totally failed to justify their action of terminating the service of the workman. I, therefore, hold that the termination of the workman is neither justified nor in order and the workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated the 29th June, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 1593, dated the 1st July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.